

that of someone who is confident that in most cases, government technocrats can do better things with Americans' hard-earned incomes than Americans can do for themselves.

When we look at the variable menu of recent tax rates proposed by Democrats, we have to ask whether, once enshrined into law, the 5.6-percent rate or the 0.5-percent rate or whatever happens to be their flavor of the week is where my friends on the other side of the aisle would leave things. I have every reason to doubt they would stop at those rates and every reason to believe they will work as hard as they can to keep increasing those rates, demolishing businesses and jobs as they go. I have every reason to believe the current President will stick with his commitment to "spread the wealth around" and ask the so-called rich—and that could mean people who earn as little as \$200,000, according to Democrats—to pay "just a little bit more."

So where will they stop? What is the optimal tax-the-rich rate of taxation? Economist Peter Diamond, who was nominated by the President to serve on the Federal Reserve Board, has proposed in recent writings that "tax policy needs to be socially acceptable" and then finds it acceptable to go on to say that the so-called optimal top tax rate could be as high as 73 percent. The current top marginal tax rate on earnings in the U.S. economy is around 42.5 percent when we combine income tax rates of 35 percent with the Medicare tax and average State taxes. The cutoff for the top percentile of tax filers is about \$400,000, according to Diamond's analysis.

When we consider the liberal conventional wisdom about how businesses operate, the American people, it seems to me, should be careful about where the Democrats' tax hike proposals might lead. The bottom line is that the sky is the limit.

Consider the New York Times' December 9 editorial, tucked in between advertisements for jewelry, properties, and baubles that only the tremendously megarich could afford, where the liberal press offered the following guidance on tax policy:

The latest Democratic bill to cut the payroll tax, blocked by Republicans on Thursday, called for a 1.9 percent surtax on income over \$1 million. More important, for any savvy business owner, a surtax would have no bearing on hiring decisions. If new workers are profitable before tax, they will be profitable after tax, even if the employer has to pay slightly more of the profit in taxes.

This perfectly encapsulates the understanding of the economy by folks who have never run a business or tried to turn a profit. The liberal notion is that business owners are immune to basic economics and that their hiring decisions are entirely unaffected by tax rates.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. I ask unanimous consent to be able to speak for just a few minutes more.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. With this view in mind, it is not hard to imagine proposals for taxes upward of 73 percent because those megarich business owners simply won't flinch.

The Democrats' burning desire to raise taxes seems to confuse income and wealth. They abhor the outsized wealth accumulation of the megarich, even though they love the campaign contributions flowing from them. They seem to think that massive increases in income taxes will cure the growth in inequality observed over decades in the United States and in many foreign economies.

Some of our Nation's wealthiest individuals, such as Bill Gates and Warren Buffett, join this chorus and call for higher taxes on others, even though they channel large portions of their wealth to private foundations, revealing their preference for resources to be allocated in the private sector rather than by the government.

Even our President calls for more taxes on himself, although he could write a check to the IRS at any moment. He calls for a Buffett rule, even though he paid a tax rate of 26.3 percent in 2010, which, according to a recent Congressional Research Service analysis, means the President violates his own idea of the Buffett rule by paying a lower tax rate than well over 10 million more moderate income taxpayers.

The past few months have witnessed a variable menu of tax rates offered by my friends on the other side of the aisle. They claim these tax increases will secure equality, economic growth, job creation, and more.

Those claims are false. The evidence is clear that the recent proposals from Democrats have been more of the same: tax and spend, move toward a permanently larger government, and design politically motivated bills they know will fail in the Congress in order to hone election year talking points.

We need to be clear with the American people that these proposals might be good for government, but they will do little to cure the ills of our economy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent to speak for up to 15 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CLASS WARFARE

Mr. KYL. Mr. President, last Thursday marked the fifth time this year the majority has initiated a vote on the so-called millionaires' surcharge—a tax that primarily affects small businesses—in order to "pay for" a piece of legislation. Notably, Thursday also marked the fifth time this year this tax increase failed to pass the Senate,

which suggests, of course, it is being used for political purposes.

President Obama and his supporters have argued that the tax increases they support—such as the millionaires' surcharge—will not affect anyone but the wealthiest Americans, and that those people have to start doing "their fair share" because they "can afford it." They repeat the phrase "shared sacrifice."

In a recent campaign speech in Kansas, President Obama took the class warfare argument to a whole new level, injecting his speech with false economic moralisms and evoking what he calls the "you're on your own" economics of Republicans and suggesting that the "breath-taking greed of a few"—these are his words I am using—has been crushing the middle class. The President's object seems to be purposefully conflating all upper income taxpayers with those reckless few who helped cause the financial crisis, ignoring, I might add, those in Congress who also helped to create that crisis.

The President's rhetoric is not only wrongheaded, in my view it is irresponsible. I wish to make three points in response.

First, the President of the United States should not be pitting Americans against each other. Class warfare has no place in American debates. It is divisive, and it is unhelpful to the national discourse. It is especially unbecoming of the President, who is the only person elected to represent all Americans. He should speak for all Americans, especially in times of high unemployment and high economic uncertainty, not pit them one against each other for short-term political gain.

America is not a caste society. There is no formal class structure engrained into our way of life. The opposite is true. That is why millions of people left the old countries in Europe and elsewhere to come here for economic opportunity and to compete in our free markets.

Why doesn't the President offer encouragement about America's strengths and its future, rather than play into some Americans' fears? In other words, why doesn't he run the kind of campaign he ran in 2008—one based on unity and hope?

The answer, I am afraid, is because the President's record during the last 3 years does not inspire much hope: a massive stimulus filled with special-interest goodies, a government takeover of health care, a failed cap-and-trade agenda, an EPA power grab, and more new job-killing regulations than one can count.

Obviously, the policies of the last 3 years have not left Americans in better shape than they were 3 years ago. Indeed, about three-quarters of Americans say the country is on the "wrong track." As columnist Charles Krauthammer wrote in a recent column: "Obama has spent three years on signature policies that ignore or aggravate" structural problems, such as

high unemployment, weak growth, vast debt, and our strained safety net and dysfunctional Tax Code.

So the President cannot run on his record. And he does not want voters to focus on how his policies may have prolonged our economic troubles or that his party controlled Washington for the first 2 years of his Presidency. His way out is to blame others.

But rather than stir up resentment and unease, I suggest the President focus on strengthening opportunity for all Americans. That gets to the second point, which addresses the assertion that upper income taxpayers are not doing their fair share. This is patently false. Let me provide a few instructive numbers.

According to IRS data, the top 1 percent of taxpayers pays 38 percent of total income taxes but earns only 20 percent of total income. In other words, the top 1 percent earns 20 percent and pays almost double that in their share of Federal income taxes.

The top 2 percent of taxpayers pays almost half of all the taxes—48.68 percent, to be exact. They only earn a little under 28 percent of the total income and pay almost 50 percent. So the top 2 percent are paying almost 50 percent of all the taxes. And this is not a fair share? This is not doing their part?

The top 5 percent of taxpayers pays 58.7 percent. They earn just a little over one-third of all of the income. In fact, the top 5 percent pays more than the bottom 95 percent, total. The top 5 percent pays more taxes by far than the rest of the 95 percent. And they are not doing their fair share?

The top 10 percent of taxpayers pays almost 70 percent and still earns less than 50 percent of total income—45.7 percent, to be exact.

The bottom 95 percent of taxpayers pays 41.3 percent. They earn 65.3 percent of total income. So the bottom 95 percent—this is a big chunk of American taxpayers—is earning a lot more in percentage than they are paying in percentage of income taxes.

The Joint Committee on Taxation estimates that 51 percent of all households, which includes both filers and nonfilers, had either zero or negative income tax liability for the year 2009. Such progressive taxation is, in fact, “shared sacrifice.” The United States has the most progressive income Tax Code of any country among developed nations. So the argument that top-tier earners are not doing enough does not hold water, and somebody needs to call the President on this false argument of his because it attempts to pit one group of Americans against the other when in point of fact the President, of all people, should be unifying Americans.

The third point is related to who actually would pay this millionaires’ surcharge that the President advocates and our colleagues have been urging us to vote for yet again. This proposed tax increase will presumably be trotted out again and again. It cannot get the

votes to pass, but it makes a nice political charge.

The President and his supporters claim it would only affect the wealthiest of the wealthy. Well, the fact is this tax would crush small business owners. Many small businesses are organized as “pass-through” entities. That means they pay their taxes as individuals. They are not organized as corporations. They do not pay their taxes as corporations. They pay as individuals.

So when the plumbing company or the air conditioning company pays taxes, that small business owner pays them as an individual and, therefore, he pays at the individual income tax rates. If you are in one of the top two rates—and 50 percent of small business income is reported in those top two rates—you are going to get clobbered by this surtax on millionaires. And these are the very businesses, the most successful small businesses, that create many of America’s new jobs.

According to the National Association of Manufacturers’ December 5 weekly report:

Small and medium-sized payrolls (those with less than 500 employees) accounted for the bulk of the net new jobs, continuing a familiar trend. This was true for both the goods-producing as well as the service-producing sectors.

There is a lot of data that shows many of these job-creating small businesses would be slammed by a millionaires’ surcharge.

For example, a Wall Street Journal editorial reports that the Joint Committee on Taxation has estimated that taxpayers will declare \$1.2 trillion in business income in 2013. Of this reported tax income, 34 percent would be “on tax returns with ‘modified adjusted gross income in excess of \$1 million.’” As the Journal notes, that means about \$400 billion in business income would be subjected to the so-called millionaires’ surcharge tax.

And who pays that? As the Journal writes, the Treasury Department examined IRS data in 2007 and found 392,000 tax returns with incomes above \$1 million, 311,000 of which were classified by the Treasury Department as “business owners.” So 80 percent of a payroll tax surcharge will fall on these small business owners. That is a direct tax on job creation. What could you think of that would do more harm to creating jobs in America than imposing a brandnew tax on the people who we hope are going to create the new jobs coming out of this recession? Remember too that taxes are already set to go up in 2013 when the current tax rates expire. On top of that, business investors will also face a 3.8-percent ObamaCare “investment income tax surcharge” set to begin in 2013.

How is taking money away from these small businesses going to allow them to expand and hire more workers?

John Mackey, who is the cofounder of the wildly successful Whole Foods chain, wrote an op-ed last month explaining, from his point of view, what

policies can help and harm job growth. He writes:

One hundred years ago the total cost of government at all levels . . . was only 8 percent of our gross domestic product. In 2010, it was 40 percent. Government is gobbling up trillions of dollars from our economy to feed itself through higher taxes and unprecedented deficit spending—money that could be used by individuals to improve their lives and by entrepreneurs to create jobs.

Policymakers would do well to listen to the advice of entrepreneurs such as John Mackey about a real growth agenda. Americans are counting on job creators in the private sector to help turn the economy around by putting capital at risk and hiring new employees. Relentless class warfare and obsessing over income redistribution are not real policy prescriptions.

Mr. President, I ask unanimous consent to have printed in the RECORD the op-ed piece by Charles Krauthammer which I mentioned.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Dec. 8, 2011]

OBAMA’S CAMPAIGN FOR CLASS RESENTMENT  
(By Charles Krauthammer)

In the first month of his presidency, Barack Obama averred that if in three years he hadn’t alleviated the nation’s economic pain, he’d be a “one-term proposition.”

When three-quarters of Americans think the country is on the “wrong track” and even Bill Clinton calls the economy “lousy,” how then to run for a second term? Traveling Tuesday to Osawatimie, Kan., site of a famous 1910 Teddy Roosevelt speech, Obama laid out the case.

It seems that he and his policies have nothing to do with the current state of things. Sure, presidents are ordinarily held accountable for economic growth, unemployment, national indebtedness (see Obama, above). But not this time. Responsibility, you see, lies with the rich.

Or, as the philosophers of Zuccotti Park call them, the 1 percent. For Obama, these rich are the ones holding back the 99 percent. The “breathtaking greed of a few” is crushing the middle class. If only the rich paid their “fair share,” the middle class would have a chance. Otherwise, government won’t have enough funds to “invest” in education and innovation, the golden path to the sunny uplands of economic growth and opportunity.

Where to begin? A country spending twice as much per capita on education as it did in 1970 with zero effect on test scores is not underinvesting in education. It’s misinvesting. As for federally directed spending on innovation—like Solyndra? Ethanol? The preposterously subsidized, flammable Chevy Volt?

Our current economic distress is attributable to myriad causes: globalization, expensive high-tech medicine, a huge debt burden, a burst housing bubble largely driven by precisely the egalitarian impulse that Obama is promoting (government aggressively pushing “affordable housing” that turned out to be disastrously unaffordable), an aging population straining the social safety net. Yes, growing inequality is a problem throughout the Western world. But Obama’s pretense that it is the root cause of this sick economy is ridiculous.

As is his solution, that old perennial: selective abolition of the Bush tax cuts. As if all that ails us, all that keeps the economy from

humming and the middle class from advancing, is a 4.6-point hike in marginal tax rates for the rich.

This, in a country \$15 trillion in debt with out-of-control entitlements systematically starving every other national need. This obsession with a sock-it-to-the-rich tax hike that, at most, would have reduced this year's deficit from \$1.30 trillion to \$1.22 trillion is the classic reflex of reactionary liberalism—anything to avoid addressing the underlying structural problems, which would require modernizing the totemic programs of the New Deal and Great Society.

As for those structural problems, Obama has spent three years on signature policies that either ignore or aggravate them:

—A massive stimulus, a gigantic payoff to Democratic interest groups (such as teachers, public-sector unions) that will add nearly \$1 trillion to the national debt.

—A sweeping federally run reorganization of health care that (a) cost Congress a year, (b) created an entirely new entitlement in a nation hemorrhaging from unsustainable entitlements, (c) introduced new levels of uncertainty into an already stagnant economy.

—High-handed regulation, best exemplified by Obama's failed cap-and-trade legislation, promptly followed by the Environmental Protection Agency trying to impose the same conventional-energy-killing agenda by administrative means.

Moreover, on the one issue that already enjoys a bipartisan consensus—the need for fundamental reform of a corrosive, corrupted tax code that misdirects capital and promotes unfairness—Obama did nothing, ignoring the recommendations of several bipartisan commissions, including his own.

In Kansas, Obama lamented that millions “are now forced to take their children to food banks.” You have to admire the audacity. That's the kind of damning observation the opposition brings up when you've been in office three years. Yet Obama summoned it to make the case for his reelection!

Why? Because, you see, he bears no responsibility for the current economic distress. It's the rich. And, like Horatius at the bridge, Obama stands with the American masses against the soulless plutocrats.

This is populism so crude that it channels not Teddy Roosevelt so much as Hugo Chavez. But with high unemployment, economic stagnation and unprecedented deficits, what else can Obama say?

He can't run on stewardship. He can't run on policy. His signature initiatives—the stimulus, Obamacare and the failed cap-and-trade—will go unmentioned in his campaign ads. Indeed, they will be the stuff of Republican ads.

What's left? Class resentment. Got a better idea?

Mr. KYL. I thank the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

#### ORDER OF PROCEDURE

Mr. KERRY. Mr. President, I apologize for interrupting my colleague, and I will not for long. I think my colleague wants to speak on the subject of the nominations that are going to be contained within an hour of debate, equally divided. I want to make certain the comments of the Senator are going to be part of that time period. So if I could ask, for my colleague—I believe we are almost at the hour where we

have to go to executive session and report the two nominations. I would be happy, then, to yield to my colleague to speak first, if he wishes.

Would my colleague agree with that?

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I am willing to do that, but I thought I maintained the right to the floor by—

Mr. KERRY. Mr. President, I ask unanimous consent that after we have moved to executive session, the Senator from Iowa be the first to speak in the time period allotted to the opponents.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

NOMINATION OF NORMAN L. EISEN TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CZECH REPUBLIC

NOMINATION OF MARI CARMEN APONTE TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF EL SALVADOR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, en bloc, which the clerk will report.

The bill clerk read the nominations of Norman L. Eisen, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Czech Republic, and Mari Carmen Aponte, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of El Salvador.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate equally divided in the usual form.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to speak about one of the votes we are going to have this afternoon, and it has nothing to do with Mr. Eisen's job as Ambassador. It is about why he has not been confirmed to this point.

The President announced Mr. Eisen's nomination to be Ambassador to the Czech Republic on June 28, 2010. On September 20, 2010, I provided public notice of my intention to object to the nomination. In other words, as I always do when I put a hold on some-

thing—a bill or a nomination—I put a reason in the CONGRESSIONAL RECORD so that everybody knows it is me. I am not a secret-holds guy.

The reason for my objection is not related to the substance of his duty as Ambassador; I object to his nomination because of the way Mr. Eisen handled the controversial firing of Gerald Walpin and the congressional inquiry into that firing. Mr. Walpin was the inspector general at the Corporation for National Community Service, AmeriCorps. Mr. Eisen was at the White House Counsel's office at the time.

Any attempt to undermine the independence and integrity of inspectors general raises serious concerns with me, and anybody ought to know that about this Senator. An inspector general who does his or her job runs the risk of losing friends at any agency as well as maybe the White House. The Congress must not sit idly by when an inspector general is removed improperly.

After the President abruptly removed Inspector General Walpin from office, there were allegations that he was fired for political reasons. So I started the investigation. There was evidence that the removal may have been motivated by a desire to protect a friend and political ally of the President, mayor of Sacramento Kevin Johnson.

The inspector general and CNCS management were clashing over an inquiry into misuse of Federal grant money at a charity run by Johnson. There were allegations that the grant money was used to pay for personal services for Johnson such as maybe washing his car. There seemed to be evidence of that. There were allegations that the grant money has been used to pay for political campaign work. So what would you expect an inspector general to do?

The IG was pushing aggressively to require Johnson to repay the Federal grant money that his charity could not account for. The inspector general was also pushing to have Johnson prohibited from receiving future Federal grant funds. This caused, as you might expect, a political uproar because some people feared that might prevent the city of Sacramento from receiving Federal stimulus dollars during the financial crisis.

All of this background cried out for further investigation. I also learned that Mr. Eisen personally delivered an ultimatum to Inspector General Walpin. He demanded the inspector general resign or be terminated within 1 hour. At the time he delivered the ultimatum, no notice had been given or provided to Congress as is legally required under the Inspector General Reform Act.

The IG Act requires the President to tell Congress the reasons for removal of an inspector general 30 days before taking action. That is what the law requires. Now, ironically, I cosponsored this provision with Senator Obama before he became President Obama. The